

ENVIRONMENTAL PROTECTION COMMISSION
MINUTES
GENERAL MEETING AND PUBLIC HEARING
JULY 2, 2003

The meeting was called to order at 7:30 p.m. in Room 119 of the Darien Town Hall.

Commission Members Present: Peter Hillman, Susan Cameron, David Dineen, and Reese Hutchison

Staff Present: Nancy Sarner

General Meeting:

Old Business:

Continuation of EPC-40-2003, Marianne & Gene Lauer, 319 Middlesex Road, proposing the removal of seven trees along Stony Brook, and perform related site development activities within a regulated area. The property is located on the west side of Middlesex Road approximately 50 feet west of the intersection of Leroy Avenue and Middlesex Road, shown on Tax Assessor's Map #9 as Lot #74.

Mr. and Mrs. Lauer were not present. The EPC decided to table the application until the August 6, 2003 meeting.

New Business:

Chairman Hillman read the following agenda item:

EPC-67-2003, Darien Joint Venture, LLC, 440-444 Boston Post Road, proposing the reconfiguration and improvement of an existing commercial parking lot, and perform related site development activities within a regulated area. The property is located on the east side of Boston Post Road at the southeast corner formed by the intersection of Old Kings Highway North and Boston Post Road, shown on Tax Assessor's Map #35 as Lot #1.

Chairman Hillman asked the EPC members if the application was complete, and if they found that the proposal should be scheduled for a Public Hearing based upon the materials submitted. The Commission Members unanimously agreed that the application appeared to be complete and that they could continue at that time with a review under the General Meeting.

Attorney Mark Kurzman presented the application on behalf of Darien Joint Venture, LLC, and addressed questions from the Commission. Atty. Kurzman explained that the Zoning Board of Appeals previously approved the reconfiguration of the parking spaces as necessary, and that the current businesses operating at 440-444 Boston Post Road now find that they need to maximize the use of the existing parking lot. He stated that improved use of the parking area would be done through the restriping and other alterations of the lot. He said that the regulated activity

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 2

proposed by the application was pulling the macadam further away from the brook and replacing it with topsoil and plantings of trees and shrubs. He said that one additional parking space would be added but the project constituted the overall reduction of pavement within the regulated area. Mr. Hillman noted that more shade trees would be added. Ms. Cameron reported that the planting plan was suitable, and that the proposed Honey Locust trees reflected the existing vegetation along the brook and was a good shade tree.

Upon further review and discussion of the materials and plans presented, the following motion was made: That the Commission approve Wetlands Permit Application #EPC-67-2003 as submitted and shown on the plans entitled "Erosion Control Plan," Sheet EC 1.0, dated 5/21/2003, "Site Concept Plan," Sheet SP 1.0, dated 4/29/2003, and "Landscape Plan," Sheet LS 1.0, dated 6/19/2003, for the Post Road Plaza, 440 Boston Post Road, by Divney Tung Schwalbe, LLC. The motion was made by Mr. Hillman, seconded by Mr. Dineen and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-68-2003, Michael & Eleanor Devlin, 3 Waterbury Lane, proposing the remediation of a violation of the Town's Inland Wetland and Watercourses Regulations, and perform related site development activities within a regulated area. The violation involves the unauthorized the continued clearing of trees and shrubs and deposition of wood chip material and associated impacts to the regulated setback and wetland areas. Discussion shall include a review of the unauthorized regulated activities and consideration of proposed restoration plans including the removal of more recent wood chip material and installation of new plantings. The project is located on the west side of Waterbury Lane approximately 160 feet north of the intersection of Greenleaf Avenue & Waterbury Lane, shown on Tax Assessor's Map #28 as Lot #4.

Attorney Stephen Pierson of Pierson Law Firm and Gil Wheelless, Landscape Architect, of Environmental Land Designs were present on behalf of Mr. and Mrs. Devlin.

Atty. Pierson discussed the site history, including litigation regarding the creation of the lot and activity on the site since the Devlins purchased the site approximately six years ago. The EPC Members reviewed the May 19, 2003 Notice of Violation from Robert Woodside, Code Compliance Officer, and expressed their displeasure for the unauthorized activity that systematically altered the wetlands and associated setback areas.

Chairman Hillman stated that he believed the EPC could continue its review without a Public Hearing, and asked Atty. Pierson and Mr. Wheelless to focus on the proposed wetlands remediation activity. The other Commission Members agreed.

Atty. Pierson explained that trees were removed near the high retaining wall located south of the residence because the Devlins felt that they posed a threat since they leaned toward the residence, and that the other trees were removed throughout the site to thin the wooded area. He acknowledged that this activity was a violation of the Town's regulations. He reviewed that other unauthorized activities included the installation of two storage shed, placement of two log piles, deposition of a significant amount of woodchips, and installation of a electronic, or

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 3

“invisible”, dog fence. Mr. Hillman said that some of the work, such as the log piles and dog fence, might have been approved if applied for but that he was concerned that any unauthorized activity had occurred since the property owners had prior knowledge of the Town’s Wetlands and Watercourses Regulations. Ms. Cameron reported that additional unauthorized activity included the removal of understory vegetation, including within areas along the watercourse and vernal pool. She explained that the vegetation would provide important shade to these resources.

Atty. Pierson stated that there is no question that the areas surrounding the residentially developed portion of the property is wetlands, and that after the wetland restoration, they will be inaccessible. He reported that he had suggested to Ms. Sarner, Commission Staff, that the EPC consider publishing three to four times a year in the local papers educational public notices about what a property owner can and cannot do if they have wetlands on their properties. Chairman Hillman stated that the Planning and Zoning Office had complaints on file from the Devlins regarding alleged violations of the Town’s regulations on other properties, and that they continued to alter the regulated resources, for which there could be no excuse.

Mr. Wheelless explained that the proposed wetland restoration plan was created after site inspections and discussions with Commission Staff. Mr. Wheelless began to review the site history but Chairman Hillman requested that he focus on the wetland restoration. Mr. Wheelless reviewed the proposed planting list: 10 Red Maples, 5 Amelanchier, and 15 Red Stemmed Dogwood. The disturbed area would then be seeded with approximate 2 pounds of seed per 5,000 square feet, exceeding the manufacturer’s recommended 1 pound per 5,000 square feet. He stated that Dogwoods would be planted near the roadway per Ms. Sarner’s, Commission Staff, request to prevent future vehicular and formal access into the regulated area. He said that Ms. Sarner also requested that no woodchips be removed until Commission approval is received, and that they would begin that activity the next day by hand, if approved. Mr. Wheelless said that some invasive plant species such as bittersweet and poison ivy, and some grasses were beginning to grow through the woodchips. Ms. Cameron clarified that poison ivy is not an invasive species.

Mr. Wheelless said that the trees that had been removed consisted of small Ash trees and larger Maples. He explained that as the edge of the forested area was cut back, newly exposed trees tend to break because they are no longer protected and supported. Mr. Hutchison asked how the size of the new plantings was chosen. Mr. Wheelless replied that the larger trees, greater than 2 inches dbh, would be scrapped by deer, unlike the smaller trees that would bend, and therefore the smaller trees would have an opportunity to become established before disturbed by this deer activity. Mr. Hillman asked if other measures could be taken to better ensure the success of the restoration. Ms. Cameron recommended that the new plantings be watered very well, and she found that deer would still rub smaller trees and that burlap or sleeves could be used for protection. She then requested that the number of plantings be increased. Mr. Wheelless stated that the area along the high retaining wall had been disturbed during house construction. Ms. Sarner explained that she and Mr. Woodside were also concerned with the lack of understory growth in the rear wetlands. Mr. Wheelless stated that he could include Ilex in the plan, which can tolerate wet conditions, and that he could work with Ms. Sarner to augment the planting plan. Ms. Cameron volunteered to work with the review as well. She expressed concern that all woodchips be removed since they will leave nitrate oxide and prevent the

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 4

establishment of the seed mix. She then recommended that the electronic dog fence be kept in place to minimize disturbance, but flagged so that it would not be disturbed by the work activity. Mr. Hillman recommended that performance bond be posted.

Upon further review and discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetlands Permit Application #EPC-68-2003. The application was approved with the following stipulations:

1. That a performance bond in the amount of ten thousand dollars (\$10,000) shall be posted with the Planning and Zoning Office to ensure the required plantings within the regulated area are completed in accordance with this approval.
2. The bond shall be held for two (2) growing seasons. Half of the amount (\$5,000) shall be returned after the first growing season (no earlier than year after the work is completed). The remaining amount shall be returned at the end of the second growing season to ensure that the new plantings are established. Any diseased or dead plantings must be replaced.
3. That Environmental Design Associates works with Susan Cameron, EPC Member, and Nancy Sarner, Commission Staff, to augment the proposed restoration plan.

The Commission requires that this stipulated decision be shared with the Devlins' realtor and any prospective buyer(s). The work activity has been approved as shown on the plan entitled "Planting Plan – Devlin Residence, 3 Waterbury Lane, Darien, Connecticut", Dwg. No. P-1, by Environmental Design Associates, P.C., dated June 6, 2003, as modified by this decision. The motion was made by Mr. Hillman, seconded by Mr. Hutchison, and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-69-2003, Richard & Renee Gregory, 451 Middlesex Road, proposing the removal of six trees and perform related site development activities within a regulated area. The property is located on the west side of Middlesex Road approximately 490 feet north of the intersection of Middlesex Road and Hanson Road, shown on Tax Assessor's Map #7 as Lot #8.

Mr. and Mrs. Gregory were not present. The EPC decided to table the application until the August 6, 2003 meeting.

Chairman Hillman read the following agenda item:

EPC-70-2003, Castlegate Corp., 6 Point O' Woods Road South, proposing a stonewall with steps and new plantings, and perform related site development activities within a regulated area. The property is located on the west side of Point O' Woods Road South approximately 190 feet from the intersection of Point O' Woods Road and Point O' Woods Road South, shown on Tax Assessor's Map #13 as Lot #30.

Judy Slayback of Environmental Land Solutions presented the application on behalf of Castlegate Corporation. Ms. Slayback explained that the patio shape had changed, but it is located outside of the regulated area. She said that she had not recommended the use of Red Cedar to the applicant because they cannot tolerate wet conditions and had proposed as substitutions Siberian Spruce, White Spruce or American White Cedar.

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 5

Ms. Cameron expressed concern regarding the poor condition of the existing silt fencing and the exposed topsoil near the front wetland area. Ms. Slayback said that the Commission could not consider the 50-foot buffer area as a regulated area, and reported that CT DEP had advised the City of Bridgeport that regulated areas are limited to wetlands and watercourses. Ms. Cameron explained to Ms. Slayback that the Town's approved and adopted Wetlands and Watercourses Regulation define the setbacks as regulated areas, which ensure the protection of the wetlands. Mr. Hutchison stated that the disturbed areas must be surrounded by silt fencing whether or not a property contains wetlands. Ms. Cameron confirmed that the fencing must be fixed.

Upon further review and discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetlands Permit Application #EPC-70-2003. The application was approved with the condition that the existing silt fencing be repaired and/or replaced. The work was approved as shown the plan "Proposed Changes," dated 6/6/2003, and submitted with the application. The motion was made by Ms. Cameron, seconded by Mr. Hutchison, and unanimously approved.

Public Hearing:

Chairman Hillman read the following agenda item:

EPC-57-2003, Town of Darien, 2 Renshaw Road, proposing the maintenance dredging of the pond on Stony Brook located at the Darien Town Hall and perform related site development activities within a regulated area. The property is located on the north side of Renshaw Road approximately 250 feet west of the intersection of Renshaw Road and Boston Post Road, shown on Tax Assessor's Map #41 as Lots #17, 20 and 21.

Robert Steeger, Director of Public Works, introduced the application and explained that the pond was created through the widening of Stony Brook in 1995 as a sedimentation basin under the Gorham's Pond.

At the request of Mr. Steeger, Phil Moreschi and Tom Desantos of Fuss & O'Neill presented the application proposal. Mr. Moreschi reviewed the history of the pond, and explained that the basin was created to protect Gorham's Pond, which was impacted by sedimentation from the upper watershed. The creation of the detention basin in Stony Brook was recommended in the Kings Mark Study. The basin was created by excavating upland soils on the east side of Stony Brook to slow flow velocity to allow sediments to collect in the basin. Mr. Moreschi explained the pond is functioning as a sedimentation basin since it is nearly full, and needs maintenance to restore its original volume. He said that they found that the basin collected road sand, sediments from channel erosion, and leaf litter from residents pushing the leaves into the stream, and that the watershed for Stony Brook is a 4-square mile area including Cummings Brook and extends into New Canaan.

Mr. Desantos reviewed the proposed activity associated with the maintenance dredging of the sedimentation pond. Approximately 2,300 cubic yards of accumulated sediments would be removed. The work would begin with the installation of the stone sediment berm and the

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 6

installation of silt fencing along the shoreline. Work access from Cemetery Road would be bordered by construction barrier fencing to protect nearby graves and trees. Larger stones located in the accessway would be removed. The pond would be regraded to a 4:1 slope to match the original 1995 approved plans. No grading would occur near the stonewall to avoid impact. The dredged materials would be dewatered within the pond and then placed in trucks located in the Town Hall parking lot. Shallow water plantings would be installed to provide habitat and protect the pond from erosion.

Ms. Cameron asked of the trees to be removed to access the trucks would be removed, and particularly noted the 20-inch Maple to be removed. Mr. Steeger stated that quality of the existing vegetation is marginal and the Town would plant specimen trees.

Ms. Sarner reported that Mr. Keane of the Spring Grove Cemetery Association had expressed concern that machinery would be taken to other points of the shoreline on the cemetery property other than the approved access. The Cemetery had this type of problem during their recent pond dredging project. Chairman Hillman stated that these concerns could be addressed within the resolution.

Chairman Hillman closed the Public Hearing for Wetlands Permit Application #EPC-57-2003, and read the following agenda item:

EPC-66-2003, Friends of Goodwives River, Goodwives River Management Initiative, proposing the dredging of four ponds located within the Goodwives River channel, repair of dams and stonewalls, fill activity, and perform related site development activities within regulated areas. The application proposes the dredging of the following ponds: (1) Upper Pond, located on the north side of Goodwives River Road approximately 600 feet southeast of the intersection of Old Kings Highway South and Goodwives River Road, shown on Tax Assessor's Map #63 as Lots #98, 99, 104 & 105; (2) Upton Pond, located on the west side of Brushy Hill Road approximately 725 feet south of the intersection of Andrews Drive and Brushy Hill Road, shown on Tax Assessor's Map #63 as Lots #67 & 68; (3) Hope Pond, located on the north side of Overbrook Lane, adjacent to roadway, approximately 130 feet west of the intersection of Rabbit Lane and Overbrook Lane, shown on Tax Assessor's Map #10 as Lots #7, 8, 8C, 8A & 9; (4) Katy's Pond, located on the northwest of the intersection of Brookside Road and Meadowbrook Lane, shown on Tax Assessor's Map #15 as Lots #34, 35, 73, 74, 75 & 76.

Richard Windels, President of Friends of Goodwives River, introduced the application and explained that it is part of a larger project called the Darien Watershed Restoration Project. Mr. Windels stated that the project evolved because he owns approximately one-third of Upper Pond. He said that since he purchased the pond it has changed from a vital pond to an impaired waterbody. He explained that the project involved four ponds along the river, two north of and two south of Interchange-95. He stated that as a child he played in the two ponds north of I-95, which now have lost their healthy wildlife population including turtles, frogs and fish. Mr. Windels stated that the two ponds located south of I-95 and the Boston Post Road have accumulated road sand.

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 7

Mr. Windels explained that he believes that the greatest impact to the ponds is from I-95, which deposits road sand directly into the river as it flows under the Purple Heart Bridge. Most of the impairment has been caused by road sand from I-95 in the area of the Purple Heart Bridge. The State DOT had placed sand over a sloped riprap area to filter hydrocarbons, but that the sand would be washed directly into the river by runoff. He said that the State has taken action and recently installed load spreaders that take the sediments from the highway and empty them to the side of the highway instead of the river. He said that this road sand was the material that has been dredged at points south of the bridge, including Gorham's Pond.

Mr. Windels stated that the project involved economic issues as well as environmental issues. He reported that in 2001 and 2002 the Town of Darien and Noroton Yacht Club, Darien Boat Club and residents spent approximately half a million dollars to dredge sediments from Darien Harbor to improve navigation. He estimated that the next similar project would cost twice this amount because the dredged materials can no longer be dumped off the coast of Stamford and Darien. He said that the Friends of Goodwives River ("Friends") has asked the local boat clubs to become involved with the proposed project, and have the support of Friends of Gorham's Pond. The Kings Mark Study, a joint effort of the DEP and EPA, recommended that the sediment basins be created upstream of Gorham's Pond to protect the waterbody.

Mr. Windels reviewed historic aerial photographs of the four subject ponds. He noted that the washed out weir within Hope Pond is visible in one of the photographs, and that the weir would be replaced by a gabion sediment forebay.

Mr. Hillman asked about the work sequence. Mr. Windels replied that the work would begin at the northern most pond, Hope Pond, and move south so that any sediments that drift downstream would be collected at the next pond. He added that the Upper Pond requires seven separate permits. Ms. Cameron stated that it is important that sediment controls are installed prior to work activity, including within the watercourse.

Mr. Windels said he wanted to give the EPC additional side notes, and reported that he has received one permit from the CT DEP and that he will meet with the USDA Natural Resources Conservation Service the next day to discuss additional funding. He said that the funding would be contingent upon the installation of the proposed fish ladder to reintroduce adronomous fish populations, such as River Herring, to the river. The ladder would be located north of Goodwives River Road into Upper Pond. He reported that the Friends have received grants from CT DEP and NOAA, and hope to receive additional funds from the Natural Resources Conservation Service and the US Fish and Wildlife Service. He added that the organization must also prove that the Upper Pond Dam has historical significance. Mr. Windels stated that they would review removing sediments from the northern section of Gorham's Pond under the same permitting process. Mr. Windels said that the Friends hired Fuss & O'Neill to conduct a comprehensive watershed study to review these different issues. He said that the report will be available in a month or so on the Friends of Goodwives River website (www.GoodwivesRiver.org). The Kings Mark Study is currently posted on the website.

Phil Moreschi of Fuss & O'Neill introduced the project. Mr. Moreschi said that his firm conducted a watershed management evaluation, including land use within the watershed and

types of impact posed to water quality. Mr. Moreschi reviewed the boundaries of the watershed, noting that its is approximately 2-square mile in surface area. A small portion extends into New Canaan. The watershed is substantially developed, with intense development occurring along Boston Post Road downtown area, the MetroNorth railroad corridor, I-95, Route 1 and Route 124. Mr. Moreschi summarized that the two major threats to the river are the storm drainage system, which lack adequate catch basins and controls to collect sediments, and significant amount of impervious surface within the watershed, which increases rate, volume and duration flow, and decreases water quality. Mr. Moreschi stated that the change in the volume and duration of the water flow has contributed to channel erosion.

Mr. Moreschi stated that Fuss & O'Neill came up with a three phase approach to the watershed management for Goodwives River: (1) immediate or stop-gap measures for immediate relief to receiving waters (i.e., removal of sediment from the four ponds), (2) near term measures to be done over the next 5 years regarding issues such as stormwater management (i.e., street sweeping, cleaning catch basins, clearing ponds/sedimentation basins, etc.), and (3) long term measures to be carried out over decades through the improvement and replacement of the existing stormwater infrastructure.

Mr. Hutchison asked about the required maintenance for each of the ponds. Mr. Moreschi replied that for the short term periodic sediment removal would be required, but that in the long term sediments would be controlled at the source. Mr. Windels added that the Friends have discussed with the First Selectman town funds (\$77,000) allocated to the dredging of Upper Pond, and that they have a commitment that the Town will provide sediment removal from Upper Pond and may use the AquaTech truck, which is the Town's sump pump cleaner. He said that the Town has not committed to cleaning the three upstream ponds but he would certainly pursue the possibility.

Mr. Hutchison asked if the design of the ponds would address the sedimentation issues and allow the sediments to be collected in a more accessible area. Mr. Windels and Mr. Moreschi replied that the proposed plans addressed this issue. Mr. Moreschi explained that two of the ponds would be equipped with sediment forebays, which would be accessible by equipment. He said that the other two ponds are small and would not be suitable to function as sediment basins. Mr. Hutchison asked if easement would be in place to allow the future access of equipment. Ms. Cameron stated that she felt that the application addressed the current access very well, except for Katy's Pond, which would cross a yard area.

Tom Desantos of Fuss & O'Neill presented the maintenance dredging activity and dam repair proposed under the application. Mr. Desantos reviewed the work for Hope Pond, which is 0.9-acres and requires the removal of approximately 2,300 cubic yards of material. A large deposit of sediments is visible below the former stone weir. A gabion weir would be installed to replace the pre-existing weir to serve as a sediment forebay. The gabion baskets would be anchored in place to withstand substantial velocities. Mr. Desantos explained that throughout the four ponds, the existing grading along the banks would be maintained and come into a created 4:1 slope. The original base of the ponds was determined by investigating the ponds and locating the depth to hard sediments. Anti-tracking aprons would be used at the entrances of the construction accesses and barricade fencing would be used to maintain vehicular traffic within

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 9

approved locations. Mr. Desantos indicated the location of the stockpile location on the Hope Pond plan.

Mr. Desantos explained that the dredging of Hope Pond would be similar to the dredging of the Town Hall pond. A sediment wedge or sandbar would be installed in the middle of the pond to direct flow to the eastern shore to separate the continued water flow from the work area. Ms. Cameron asked Mr. Desantos to clarify this method since it would be used in other ponds. Mr. Desantos explained that the by directing the flow using the wedge they hope to contain most of the sediment within the pond. Ms. Cameron asked if silt fencing would be installed within the channel downstream of the work sites. Mr. Desantos replied that they would stake silt fence into the stream. Ms. Cameron asked if the fencing would be maintained and collected sediments would be removed. Mr. Desantos replied that the sediments would have to be removed, and that the fencing would be removed after the work for a pond is completed.

Ms. Cameron asked if the applicant would finish a pond before moving to the next pond, so that only one pond is worked on at a time. Mr. Desantos replied that Ms. Cameron was correct and stated that they would move north to south so that if any sediments do escape, they are collected at the next downstream pond.

Ms. Cameron asked if silt fencing would be installed on the Massie property downstream of Hope Pond. Mr. Desantos said that the fence would be installed within the stream although it does not appear on the plans. Ms. Cameron asked if they had permission to work on the Massie's property. Mr. Windels replied that he did not believe they had to but would seek permission from the Massies.

Mr. Moreschi stated that the Hope Pond would be dewatered through the outlet at the dam, if it is functional. Ms. Cameron asked if they would repair the drain. Mr. Moreschi stated that they did not have a plan for the drain repair but would if it facilitates the dredging project. He said that at this point they are not sure it would be a simple to repair the drain. Mr. Desantos noted that they would conduct some masonry dam repairs along the roadway wall.

Mr. Hillman asked about the letter of authorization from the Massies. He noted letters of authorization from property owners around the four ponds, but did not see the letter from the Massies. Mr. Windels stated that he was not certain that they had a letter from the Massies, and promised to get the consent. He added that he was surprised Mrs. Massie was not in attendance. Mr. Moreschi stated that if permission cannot be obtained, they would place the sedimentation controls within the pond. Mr. Moreschi explained that within Katy's Pond, they would use a sediment berm to protect downstream areas. The water level would be lowered and the berm would be placed in front of the outlet.

Mr. Desantos stated that another activity proposed for the Hope Pond area is the placement of some of the dredged materials on some lawn areas. He said that the fill would improve drainage and save the applicants the expense of removing the materials from the site. Ms. Cameron asked if a regrading plan would be submitted. Mr. Desantos stated that the regrading would not appear on the proposed plans because since they used 5-foot contours they could not show the actual regrading. Ms. Sarnier explained that she had requested regrading plans from the applicant but did not receive the materials. Mr. Windels said that the Whitneys and Negres from Rabbit Lane

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 10

requested the use of the fill and did not want drainage problem, and that the Negres were having a survey with the regrading Mr. Desantos and Mr. Windels stated that they would request fill permits from the Planning and Zoning Commission (PZC) and the regrading plans would be discussed and reviewed at that time. Ms. Sarner stated that Mr. Ginsberg, Planning Director, had informed her that the application filed to the PZC had been incomplete. Ms. Sarner asked if the applicants submitted regrading plans to the Planning and Zoning Office. Mr. Desantos replied that he did not review Mr. Ginsberg's comments yet and that he would respond to any concerns. Ms. Cameron asked if a review by the PZC would be sufficient. Ms. Sarner expressed concern that PZC had different review criteria from the EPC, and explained that fill could pose impact such as the alteration of drainage patterns and creation of unstable slopes. She noted that the proposed plans did not depict the edge of fill. Mr. Desantos asked the EPC to issue a conditional approval subject to PZC fill permit approval. Ms. Sarner cautioned that the PZC would not review the activity as it relates to wetlands. She expressed concern over the vagueness of the proposed plans. Mr. Moreschi stated that he did not anticipate that they would fill more than 1 to 1.5 feet in the proposed areas, and that Mrs. Negre discussed the installation of decorative, masonry retaining wall. Mr. Hillman asked if the fill and wall on the Negre property would be within the 100-foot setback area. Ms. Sarner replied that it would be. She asked when the Negres' regrading plan would be completed and if the P&Z Office had received it yet with the fill permit application. She cautioned the EPC creating an unfavorable precedent by approving fill and regarding activities without an adequate plan, and noted that the information is specifically requested within the Wetlands Permit Application forms. Mr. Desantos said that the wetlands would be protected with silt fencing around the fill and disturbed areas and that he did not know what other issues would be of concern to the EPC.

Ms. Cameron asked if there were time constraints to close the public hearing. Ms. Sarner replied that they had time to continue the hearing. Ms. Cameron recommended that the hearing be continued for two weeks, and that the applicants could resolve Mr. Ginsberg's concerns regarding the fill permit application in that time. Ms. Sarner cautioned that EPC and PZC issues should be kept separate and that each Commission had separate criteria to consider. Ms. Cameron clarified that she hoped that they could submit the regrading in that time. She recommended that the applicants submit the copies of the regrading plans to be submitted under their PZC fill permit application to the EPC.

Mr. Windels asked if the EPC would meet in two weeks. Ms. Cameron replied that the EPC would meet if they needed to. Mr. Hillman advised that they determine if there was adequate time to address issues, and that they may continue to the regularly scheduled August meeting. Mr. Hutchison recommended that the fill activity be withdrawn and pursued under a separate application. Mr. Moreschi said that this was a very good idea. Mr. Windels stated that they could seek the approval without the fill activity.

Ms. Cameron asked about the dredging of the sediment forebay, which was not specified in the construction plans. Mr. Desantos replied that the forebay would be dredged first, and then the gabion weir would be created. The area at the weir would be dredged to keep incoming water clean. The sediment wedge would be installed. The material would be dewatered within the pond and the dredged out to various shores. Ms. Cameron asked if the seven discrete sub-phases

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 11

of the project would not be done in the order listed in the construction plan. Mr. Desantos replied that they may install the weir after the dredging but that it would not change impact since sediment and erosion controls would be in place. Mr. Windels clarified that the forebay may not be installed before the dredging is completed. Ms. Cameron stated that she was satisfied as long as the sediment controls are in place.

Mr. Desantos stated that the last phase would constitute the wetlands plantings, and discussed the proposed plan by Richard Snarski. Mr. Desantos explained that the various plantings were selected based upon water depths and site conditions. Mr. Desantos and Ms. Cameron discussed the wetland planting plan.

Mr. Hillman asked Mr. Desantos to discuss the general aspects of the ponds, rather than address each pond separately, since the members have reviewed the application materials and separate pond plans.

Mr. Hutchison asked why a gabion structure was proposed instead of a concrete dam. Mr. Desantos replied that the gabion basket has porosity that would allow water to flow through in lower water elevations. He noted that some people find it more aesthetic since it has a more natural appearance. Mr. Moreschi said that gabion had the advantage of being a somewhat flexible structure that would shift if there were soil loss near the base. He said that they have long life.

Ms. Cameron asked if the conservation easement located along the eastern shore of the Upper Pond would be disturbed. Mr. Windels replied that they would not enter or work in the easement area, and the sediment wedge would run north to south within the center of the Upper Pond,

After being recognized by the Chair, Attorney Robert Maslan of Rucci, Burnham, Carta & Edelberg addressed the EPC on behalf of Hart Investments Properties, who own two lots along the eastern shoreline of Upper Pond. Atty. Maslan informed the EPC that his clients had not been noticed of the Public Hearing as adjacent property owners. After review of the proof of mailings, he stated that the notice had been sent to an old address. Atty. Maslan expressed concern and discussed the following points with the Commission and the applicant:

1. The question was raised if the Friends of Goodwives River, Inc., have legal standing to act as the "Applicant" for the application since they are a corporation that does not have ownership interest for any of the properties involved along the river.
2. The question was raised if the plan for Upper Pond accurately depicted property lines. Atty. Maslan noted that the proposed plan does not portray the conservation easement area mentioned earlier by Ms. Cameron.

Mr. Hillman recommended that, since the application would be continued, the applicants provide (1) letters from the owners stating they will act as applicants in the event that Town Counsel find that the Friends cannot act as the applicant, and (2) copies of the property surveys cited on the Fuss & O'Neill plans. Mr. Desantos argued against the continuation of the public hearing, and requested that any concerns be addressed through a conditional approval. Mr. Windels stated that he felt the EPC was pursuing a rigorous application of the regulations. Mr. Hillman supplied language for the requested letters from the owners.

Mr. Hutchison stated that he thought one of the gray areas of the palliation was maintenance and would clean the forebays and ponds. He asked if the Friends would get a commitment from the Town for assistance. Mr. Windels said that Mr. Steeger had said that some funds might be available and that they would seek a commitment. Mr. Hutchison recommended that the Friends further review the issue of maintenance easements for access to the pond.

At the request of Chairman Hillman, Atty. Maslan continued his discussion with the EPC and applicants:

3. An environmental impact study had not been provided, and that the river in the Upper Pond area is significantly different since the dam broke. Mr. Hillman and Ms. Cameron disagreed with Atty. Maslan's opinion that the ponds do not require remediation.
4. Mr. Hutchison questioned whether an environmental statement be submitted to provide a complete record.
5. Concern was raised that no public access was proposed for a project that would receive over \$200,000 in public money. Ms. Cameron noted that the Land Trust does not regard public access as necessarily desirable. Mr. Windels clarified the establishment of public access point(s) had not been made required as a condition to any monies received for the project.
6. Concern was raised that the application would change the designation and/or boundaries of flood zones along Goodwives River.

Mr. Hillman stated that the EPC would consider Atty. Maslan's concerns, and requested the following information from the Friends: Restoration plan(s) for construction access, shoreline and other areas to be disturbed by the work activity, for all four ponds.

1. Copies of all property surveys referenced on the proposed plans.
2. An environmental study or report regarding environmental impact posed by the proposed dredging activity.
3. A report or study regarding impact posed to Flood Zone(s) and floodplain(s) for the Goodwives River.

Mr. Hillman moved to continue the Public Hearing to the August 6th meeting. At the request of the applicants and their agents, the EPC decided to continue to a date to be determined. The meeting would be scheduled after opinion is received from Town Counsel regarding various issues raised, and to provide time for the applicant to provide the requested materials.

General Meeting - resumed at the close of the Public Hearing:

Chairman Hillman read the following agenda item:

EPC-71-2003, Lynda & Oisin Murray, 6 Archer Lane, proposing additions, plantings and perform related site development activities within a regulated area. The property is located on the south side of Archer Lane approximately 192 feet west of the intersection of Archer Lane and Fitch Avenue, shown on Tax Assessor's Map #42 as Lot #104.

Mr. and Mrs. Murray presented the application to the Commission. Mrs. Murray explained that property was restricted by the wetlands and stream in the backyard and the front and side yard zoning setbacks. The Commission discussed the construction activity with the Murrays.

Mr. Hillman recommended that the Commission let the Murrays decide between modular and stick construction because there would be no difference in impact concerning the subject property. Mrs. Murray confirmed that the existing oil tank would remain under the rear deck. Mr. Hutchison stated that approval would be acceptable, subject to sound construction practices and use of sediment and erosion controls.

Upon further review and discussion of the materials and plans presented, the following motion was made: That the Commission approve with conditions Wetlands Permit Application #EPC-71-2003. The application was approved with the following conditions:

1. That sediment and erosion controls are installed prior to commencement of work activity and that staging and stockpiling areas are located outside the regulated 50-foot wetlands setback;
2. That a letter be submitted to the EPC, c/o the Planning and Zoning Office, confirming that the area marked "temporary retaining wall" on Appendix F, Detailed Surface Runoff/Sedimentation and Erosion control Plan, has been mislabeled, and represents the location of the silt fencing and not a masonry wall; and
3. That the significant sized Maple located in the front yard be preserved. Care should be taken to ensure that its root system and trunk are not impacted by construction activity.

The EPC will allow the applicants to decide the type of construction, either stick construction or modular units, to the Murrays' discretion. The work activity is approved as shown on the survey entitled "Survey Prepared for Oisin Murray, 6 Archer Lane, Darien, Connecticut" by Sound View Engineers & Land Surveyors, dated May 4, 2003, and the planting plan "Appendix G: Proposed Landscaping." The motion was made by Mr. Hutchison, seconded by Mr. Dineen and unanimously approved.

Chairman Hillman read the following agenda item:

EPC-72-2003, McChord Engineering Associates, Inc., 59 Five Mile River Road, proposing demolition of an existing house, construction of a single-family residence, enlargement of an existing driveway, new walkways, installation of a stone retaining wall, plantings, a.c. units, and propane tank, drainage improvements, and perform related site development activities within a regulated area. The property is located on the north side of Five Mile River Road approximately 170 feet east of the intersection of Berry Lane and Five Mile River Road, shown on Tax Assessor's Map #66 as Lot #10.

Chairman Hillman asked the EPC members if the application was complete, and if they found that the proposal should be scheduled for a Public Hearing based upon the materials submitted. Ms. Cameron recommended that the application be scheduled for a Public Hearing since it was located along the Five Mile River. She stated that neighbors should receive notice of the pending application. Chairman Hillman reviewed that although the application appeared to maintain the amount of existing impervious area and improve runoff patterns, it would be prudent to schedule a Public Hearing because of the sensitive nature of the river and all of the work would be located within the 100-foot setback area. The EPC agreed that the Public Hearing should be set for the August 6, 2003 meeting.

Chairman Hillman read the following agenda item:

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 14

EPC-73-2003, F. Rowe & Lisa Michels, 34 Lake Drive, proposing the installation of an aboveground hot tub, removal of a tree, and perform related site development activities within a regulated area. The property is located on the west side of Lake Drive approximately 550 feet north of the intersection of Philips Lane and Lake Drive, shown on Tax Assessor's Map #30 as Lot #4.

Mrs. Michels introduced the application and clarified that the application does not include the installation of a hot tub. She explained that they found a new location for the hot tub outside regulated areas. She reviewed the June 9, 2003 letter from Swimm Pools, which stated the tree is starting to undermine the integrity of the deck and pool structure, and the June 11, 2003 letter from O'Neill's Tree Care, which states that the proximity of the tree to the residence posed a threat to the foundation and patio and that several hazardous limbs could potentially fall on the house.

Upon further review and discussion of the materials and plans presented, the following motion was made: That the Commission approve Wetlands Permit Application #EPC-73-2003 for the removal of the large Oak tree located adjacent to the rear patio. The motion was made by Mr. Hutchison and seconded by Mr. Dineen. Ms. Cameron abstained. The motion was passed by a 4 to 0 vote, with 1 abstention.

Chairman Hillman opened the discussion of general business items:

Approval of Minutes: Meeting minutes for June 4, 2003

The minutes were approved with modifications. The motion was made by Mr. Hillman and unanimously approved.

Discussion of EPC-69-2003, Richard & Renee Gregory, 451 Middlesex Road:

Ms. Cameron reported that the plantings required under the May 1999 Wetlands Permit Approval at 451 Middlesex Road were not in place, and recommended that a new planting plan for the replacement of the trees proposed for removal be submitted.

Deliberation for EPC-57-2003, Town of Darien, 2 Renshaw Road:

Upon discussion the following motion was made: That the Commission approve with conditions the Wetlands Permit Application #EPC-57-2003. The application was approved with the following conditions:

1. That the three shrubs and 24-inch Maple to be removed for access to the Town Hall parking lot for the removal of the dredge materials from the work site be replaced. The shrubs could be temporarily stored on-site and replanted, or replaced with suitable native species. The Maple tree could be replaced with a 2- to 4-inch dbh Maple.
2. That a copy of the approved plans shall be provided to the contractor prior to the pre-construction meeting. A letter from the contractor should be submitted to the EPC, c/o

the Planning and Zoning Office, to confirm receipt of the plans and acknowledge that work shall not deviate from this approval.

3. That Fuss & O'Neil, Commission Staff and the contractor meet at the pond for a pre-construction meeting.

The approved work activity shall conform to the approved plan entitled "Town of Darien – Town Hall Dredging Plan, Darien, Connecticut," Sheets 1-2, by Fuss & O'Neill Inc., dated May 2003 and received by the Planning and Zoning Office on June 2, 2003. The motion was made by Ms. Cameron, seconded Mr. Dineen, and unanimously approved.

Notification to the Board of Realtors:

Mr. Hutchison recommended that a letter be sent to the Board of Realtors apprising them of the number of violations associated with new property owners, as well as with parties interested in marketing a site. Mr. Hutchison volunteered to deliver a letter to be written by Ms. Sarner, Commission Staff.

Approval of First Phase of Wetlands Plantings at 504 Mansfield Avenue:

Mr. Hillman moved that the first part of the wetlands restoration had been satisfactorily completed and a Zoning Permit could be issued for the residential development, with the condition that any regrowth of the Japanese Knotweed be removed. The motion was seconded by Ms. Cameron and unanimously approved.

Permit Amendment for #EPC-3-2002, Tom & Kathy Arrix, 63 Salem Straits:

Ms. Sarner reviewed the proposed plan modification, which would extend the approved rear addition over the approved deck so that southern wall of the addition lines up with the southern wall of the existing residence. The construction footprint shall not be changed, and the addition and deck shall still be cantilevered over the stone patio. It was the consensus of the meeting that the plan modification be approved as shown on the plan entitled "New Addition & Alterations – Residence of Mr. & Mrs. Tom Arrix, 63 Salem Straits, Darien, CT" by Michael Palumbo Designs, last revised April 24, 2003, and that the dead Tulip Tree located in the backyard could be removed without further EPC review.

Maintenance Plan for #EPC-32-2003, Tom Dale, 49 Stony Brook Road:

The Commission reviewed and accepted the maintenance schedule/plan submitted within Mr. Dale's June 17, 2003 letter. This plan addresses Condition #6 of the March 27, 2003 emergency approval for the repair/replacement of the blocked culvert located under the driveway at 49 Stony Brook Road.

Discussion of Septic System at Ozanne property, 114 Goodwives River Road:

Ms. Sarner explained that Zoning and Building Permits were issued and Health approval given for the installation of a septic system within 200 feet of Gorham's Pond without Wetlands Permit approval. Ms. Sarner explained that Vince Proto, Health Director, would forward all septic

ENVIRONMENTAL PROTECTION COMMISSION
MEETING MINUTES FOR JULY 2, 2003
PAGE 16

system plans to her attention to prevent similar oversights in the future. Although it is unusual for this type of situation to occur, the Members confirmed that they cannot waive permit requirements and deviate from normal regulatory procedures, and determined that Wetlands Permit Approval for the legalization of the existing septic system should be submitted for review prior to the issuance of a Zoning Certificate of Compliance and an Approval to Discharge from the Health Department.

Request to Transfer Wetlands Permit Approval #EPC-21-2001 to Theodore & Katherine Hildner:

The EPC determined that the permit approval, which was based upon a stipulated decision, could transfer with the condition that the new property owners, Mr. and Mrs. Hildner, confirm in writing prior to the issuance of a Zoning Permit that they are familiar with the plans and decision adopted by the EPC. Specifically, the Hildners should confirm that (1) they are aware that the inground pool cannot be constructed without the implementation of the wetland restoration shown on the plan, and (2) the wooded regulated areas shall be preserved.

Adjournment: Having no further business to attend to, the Commission adjourned the July 2, 2003 meeting at 11:50 p.m.

Respectfully submitted,

Nancy H. Sarner
GIS Specialist/Planner